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OFFICE OF PETITIONS

CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM MI 48009

In re Application of :
Shihong Gary Song :
Application No. 10/770,893 : **DECISION ON PETITIONS**
Filed: February 3, 2004 :
Attorney Docket No. EH11083U:67097- :
022 :

This is a decision on the communication filed March 5, 2010, entitled, "APPEAL BRIEF," with a petition embedded in the communication, which is being treated as a "PETITION TO WITHDRAW HOLDING OF ABANDONMENT (37 CFR 1.181 (a)) OR, IN THE ALTERNATIVE, PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)". This is also a decision on the Request for Refund filed June 30, 2010.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

A Notice of Appeal accompanied by a Pre-Appeal Brief Request For Review was filed on June 30, 2009. A Notice of Panel Decision from Pre-Appeal Brief Review was mailed on July 30, 2009.

Petitioner states that "Appellant did not receive this Notice but desires to continue this application and appeal. Examiner Kessler called Appellant's representative on March 2, 2010. Examiner Kessler has either not abandoned this or has withdrawn the apparent abandonment due to appellant's non-receipt of the Notice."

Petitioner should be aware that the application became abandoned by operation of law on January 31, 2010. The Notice mailed July 30, 2009 states that, "The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the notice of appeal, as applicable." An Appeal Brief

accompanied by a five month extension of time was filed on March 5, 2010, which is outside of the extendable period to reply.

As to the petition under 37 CFR 1.181(a):

The evidence provided for in the above petition has been considered but is not convincing to substantiate the granting of the petition to withdraw holding of abandonment under 37 CFR 1.181(a). Therefore, the petition is dismissed.

The Office requirements for granting a petition to withdraw the holding of abandonment based upon non-receipt of an Office communication have been modified. The Office requires a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the U.S.P.T.O. The statement should establish that the docketing system is sufficiently reliable. In addition, a copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. The above was not provided.

As to the petition under 37 CFR 1.137(b):

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice mailed July 30, 2009, is accepted as having been unintentionally delayed.

As to the Request for Refund filed June 30, 2010:

In view of the granting of the petition under 37 CFR 1.137(b), the request for refund of the petition fee is dismissed. However, since the brief was filed after the case was abandoned, the extension of time fee submitted on March 5, 2010, is being credited to petitioner's deposit account number as authorized.

Petitioner is reminded of 37 CFR 1.4(c), where each distinct subject matter should be filed separately.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 1793 for appropriate action by the Examiner in the normal course of business on the reply received July 22, 2010.

/KOC/

Karen Creasy
Petitions Examiner
Office of Petitions